

Corneliu V. Sarca
17950 Lassen Street, B-15
Northridge, CA 91325
CSEA - CSU Division - BU 9
Calculation of the fee challenger.

February 23, 2005

To:
Robert Thompson, General Counsel
PUBLIC EMPLOYMENT RELATIONS BOARD
Sacramento Regional Office
1031 18th Street
SACRAMENTO, CA 95814-4174
FAX: (916)327-6377

Dear Mr. Thompson,

The request that PERB revise agency regulations is appropriate, but in the point of view of a challenger should not be restricted to *Hudson*, and the changes have to reflect the primary intent for the agency fee as follows:

1. To avoid free riders, to permit the exclusive representative to receive financial support from those employees who receive the benefits of this representation.
(*CA Gov. Code - RALPH C. DILLS ACT*)
2. To make sure that the union exacts only those fees that are necessary and reasonable expenses for representation.
(*Abood v. Detroit Board of Education; 431 U.S. 209; Ellis v. Railway Clerks, 466 U.S. 435; Communications Workers v. Beck, 487 U.S. 735*).
3. Does not misuse the fees, does not use the fees even temporarily for improper purpose.
(*Teachers v. Hudson, 475 U.S. 292*)

In cases of incorrect charges all Supreme Court rulings always makes reference to the fact that nonmember's fees could not be used by the union even temporarily.

The fact that the Supreme Court does not have yet a case for expenses above the necessary and reasonable purpose does not justify the union interpretation that they have the right to overcharge.

	A	B	C	D	E	F	G	H	I	J	K
1								Re:			
2	Proof by Contradiction			Absurd Assumption Demonstration							
3				Based on the latest Audit and Financial Report Available for Year 2003							
4				used to calculate the fee for July 1,2004 - June 30,2005							
5	The demonstration shows that the way the union does the calculation is wrong based on the assumption										
6	that the union will increase the dues for members to 1.25%, 1.75% or 2.00%										
7				Union Way	Union Way	Union Way	Union Way				
8				Due %	Due %	Due %	Due %				
9				1	1.5	1.75	2.00				
10	Revenues and Resources										
11		911 Dues Income		2,626,892	3,940,338	4,597,061	5,253,784				
12		915 Fees Income		2,766,222	4,149,333	4,840,889	5,532,444				
13		Interest Income		62,802	94,203	109,904	125,604				
14		Miscellaneous Income									
15		Subtotal		5,455,916	8,183,874	9,547,853	10,911,832				
16	Transfers										
17		Central Support Usage		(932,749)	(932,749)	(932,749)	(932,749)				
18		Political Activity		(83,662)	(83,662)	(83,662)	(83,662)				
19		UC Resources		2,529							
20		Subtotal		(1,013,882)	(1,016,411)	(1,016,411)	(1,016,411)				
21											
22	Net Revenue and Resources			4,442,034	7,167,463	8,531,442	9,895,421				
23											
24	Program Expenditures										
25		12 CSU Operations		3,018,774	3,018,774	3,018,774	3,018,774				
26	Surplus(Deficit) from Operations			1,423,260	4,148,689	5,512,668	6,876,647				
27											
28	JUNE NOTE Total Expenses			3,955,231	3,955,231	3,955,231	3,955,231				
29	JUNE NOTE Charge. Expend.			3,489,249	3,489,249	3,489,249	3,489,249				
30	The fee payers are charged for more than the total CSU Operations (Line 25)										
31	Union % charge based exclusively on expenditures										
32	disregarding the surplus/deficit			88.22 %	88.22 %	88.22 %	88.22 %				
33				D29*100/D28							
34	If CSEA charges the same amount in all those conditions something is wrong										
35	The CSEA, at the end of the year, records all the surplus as its asset										
36	The overcharge becoming an asset of the CSEA in contempt of substantive law										
37				The right way	The right way	The right way	The right way				
38	% of income from Fee payers			50.70 %	50.70 %	50.70 %	50.70 %				
39	Surplus from Fee payers			D26*D38/100							
40	expressed as % of income			721,612	2,103,441	2,794,996	3,486,552				
41											
42	Correct chargeable amount			D29-D40							
43	Considering the surplus/deficit			2,767,637	1,385,808	694,253	2,697				
44				D43*100/D28							
45	Correct % of charge			69.97 %	35.04 %	17.55 %	0.07 %				
46											
47	If the surplus/deficit is considered in the calculation the percentaj is adjusted										
48	automaticaly in the way accounting should be done										
49											

This is a mathematical demonstration of the wrong assumption of the calculation based exclusively on chargeable/nonchargeable expenditures.

The subject of the arbitration should remain as it is: “... *challenges the amount of the fee ...*” and **not** “... *challenges the chargeable figure...*”.

4. Return the portion of the fee in excess of proper expenditures.

At this time the union records as it asset the amount exacted that is above the chargeable expenditures. PERB could reasonable specify a 2-3% of chargeable expenditures to remain as a reserve in the fee payers’ restricted refundable account.

(29 U.S.C. Taft-Harley Act, Chapter 7, Subchapter II Sec. 158 (b) (6); CA Gov. Code, Title 1, Div. 4, Chapter 10.3, 3515.8; Cumero v. PERB, 49 Cal.3rd 575)

5. In order for the fee payers to be able to gouge the propriety of the fee calculation, the financial report has to show the balance sheet of the restricted refundable account of fee payers and not only the chargeable/nonchargeable expenditures.

The text in Filling of Financial Report should remain as it is “... *and (b) identify the expenditures(s) that constitute(s) the basis for the amount of the agency fee.*” and **not** “... *union’s calculation of chargeable and nonchargeable expenditures.*”

Any withholding of financial support of the union is within the protection of the First Amendment.

The regulation of the Agency Fee Appeal Procedure should not be left for the union. *Hudson* requires the hearing to incorporate safeguards “*The combination of an internal union remedy and an arbitration procedure is unlikely to satisfy constitutional requirements given the nature of the issues to be decided and the union’s stake in how they are decided.*”

In my opinion the NOTICE OF PROPOSED CHANGES should have been sent to all challengers of the calculation of the fee. A unilateral opinion can not have a good output.

I will appreciate if you will post this letter along with the union proposed revisions.

Sincerely,

Corneliu V. Sarca

(818)718-2002; Work (818)677-2767
victor.sarca@csun.edu